

couple of days, yet your letter advised that these proposals were under consideration since August.

It is now two weeks since the Order came into force yet we still await receipt of specific further information, including statistical data relating to Wales, which we requested in order to be able to consider the impact of this proposal throughout Wales. My officials also sought to understand more about why police forces in England rescind such a higher proportion of fixed penalty notices before prosecution than is the case in Wales, and wanted to know, amongst other things, whether any police forces in Wales have embedded the “third supervisory review at all stages of the process”, which you mention in your letter is to identify and rectify errors.

This illustrates the entrenched difficulties – indeed frustrations – which we experience as a result of a devolution settlement, which fails to recognise the fundamental needs of any law-making government.

Our responsibilities to protect public health have required the Welsh Government and the Senedd to make laws establishing criminal offences and providing for how those offences are enforced. That means devolved institutions are required to legislate as to which authorities can prosecute those offences and we are required to keep that legislation under review.

We cannot sensibly be expected to take these decisions and monitor their impact without access to the necessary wide range of accurate and timely enforcement information. It is one of the basic principles underlying all other law-making governments in the world, yet denied to the Welsh Government.

I am also concerned that defendants in receipt of a single justice notice, which states, “the defendant has breached a restriction without reasonable excuse” may not realise that the opportunity to put forward the fact that they had a reasonable excuse is still open to them. In the absence of any affordable legal advice, a defendant may also not know if the fixed penalty notice was issued correctly under the version of the regulations in force on the date in question.

There is still no practical option available to contest the issue of a coronavirus-related fixed penalty notice without risk of acquiring a criminal conviction. Individual citizens in Wales must have confidence that the justice system has the time, capacity and willingness to ensure that their own, highly-individual circumstances, are properly taken into account. I firmly believe that the coronavirus regulations are “novel” in the sense that they seek to criminalise behaviour that would, in normal times, be regarded as normal. They are also subject to frequent amendment as the circumstances of the pandemic change and their enforcement requires an element of judgement as to the existence or not of a reasonable excuse. Imposing fixed penalties in situations where that element of judgement is required is extremely unusual. Fixed penalties would commonly be issued as an alternative to prosecution, where the commission of the offence is a matter of plain fact.

For all of these reasons it is all the more important that access to due process is not constrained because of the compromised effectiveness of the justice system.

In light of all this, I would be grateful if you could advise me, what evaluations are being proposed to investigate whether the high level of rescindment before prosecution of fixed penalty notices issued by police forces is demonstrative of a high level of incorrectly issued fixed penalty notices, which have nevertheless been paid. In particular, given that rescindment levels appear to be different in Wales to England and police have been